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SUBJECT: WAR CRIMES PROSECUTORS TO EXPAND REGIONAL COOPERATION

REF: A. ZAGREB 159
¶B. 06 ZAGREB 1251
¶C. 06 ZAGREB 941
¶D. 06 ZAGREB 898

¶1. (U) SUMMARY AND COMMENT: Prosecutors from Croatia, Bosnia, Montenegro, Serbia, and the International Criminal Tribunal for the former Yugoslavia (ICTY) agreed on new forms of cooperation in war crimes cases at a private regional meeting on Brijuni Island July 11-13. Chief State Prosecutor Mladen Bajic told PolOff August 13 that the prosecutors agreed to develop criteria for each state to compile a comprehensive "inventory" of pending war crimes cases. These inventories will help avoid duplication of investigations, facilitate determination of the best venue for each case, and guide the ICTY in rendering increased case development assistance. Full text of the meeting's recently published conclusions provided below.

¶2. (SBU) According to Bajic, the Brijuni meeting represented movement beyond the OSCE-sponsored "Palic Process," which helped create a dialogue among regional prosecutors over the past two years. "We don't need the OSCE to bring us together any more," Bajic said, pointing to bilateral cooperation agreements with BiH, Montenegro, and Serbia and evidence transfer agreements with all but BiH (reftels) as concrete examples. Under the auspices of Ambassador for War Crimes Issues Clint Williamson, Post's regional S/WCI office is organizing a meeting of prosecutors on Hvar Island October 1-4 to advance development of case inventory criteria and promote inclusion of BiH in evidence transfer agreements. END SUMMARY AND COMMENT.

CALL FOR ASSISTANCE FROM ICTY TRANSITION TEAM

¶3. (SBU) In light of the scheduled closure of the ICTY in 2010, Bajic said, the meeting focused on convincing ICTY chief prosecutor Carla Del Ponte of the need to staff up her transition team in order to assist regional prosecutors in accessing and developing cases from the Tribunal's five-million document data base. While Bajic's team now routinely uses ICTY-collected evidence in ongoing prosecutions, his regional colleagues have had much less exposure to the data base.

¶4. (SBU) According to Thomas Osorio, head of ICTY's Zagreb liaison office, the Brijuni meeting served to alert Del Ponte to the need to retain knowledgeable staff she would otherwise let go as ICTY cases wrap up. Bajic stressed the need for

the transition team to be headed by a strong personality with some regional clout, such as Del Ponte's chief of investigations Patrick Lopez-Torres.

BiH FACES GREATEST CHALLENGES

¶5. (SBU) In pushing for each prosecutor to compile an inventory of war crimes cases, Bajic admitted that his target was BiH, which continues to maintain it has 13,500 open cases. Bajic, who reduced his own case inventory from 4,000 to about 1,100 through a methodical case review that eliminated duplicate cases and those without evidence or merit, is convinced BiH could reduce their caseload by 50 percent or more.

¶6. (SBU) Bajic also expressed interest in concluding an evidence transfer agreement with BiH, allowing him to prosecute crimes committed in BiH when an accused Croatian citizen is apprehended in Croatia and constitutionally cannot be extradited. Croatia has already transferred evidence in 25 cases to Serbia under a similar bilateral agreement and is preparing several cases for Montenegro.

¶7. (SBU) Bosnian courts continue to maintain that anyone accused of a war crime in BiH should stand trial in BiH, but constitutions in all of its neighbors forbid extradition of their own nationals, keeping thousands of cases from moving forward. Bajic explained that the constitutional changes that would be required to allow extradition are a political impossibility for the time being and something that ultimately must be resolved by politicians rather than prosecutors. Since he doesn't expect politicians to take this on during his tenure, he sees evidence transfer agreements as the only practical way forward in cases where

the accused is exploiting citizenship to avoid justice.

¶8. (SBU) Bajic stressed that BiH war crimes prosecutor Jurcevic will face difficult political opposition both in culling cases and in agreeing to evidence transfer, so the international community, including S/WCI, Embassy Sarajevo, and the UN High Rep, will need to publicly support this effort.

S/WCI HVAR MEETING TO SERVE AS NEXT STEP FORWARD

¶9. (SBU) COMMENT: S/WCI's October meeting on Hvar Island, with the support of DOJ's OPDAT program, will serve as a key opportunity to demonstrate USG support for additional progress in regional war crimes cooperation. In Croatia, bilateral cooperation agreements were relatively easy; the evidence transfer agreements with Montenegro and Serbia were politically trickier. Asking BiH to drop cases and agree to transfer evidence in others is an entirely new level of sensitivity. Post welcomes input from Embassies Sarajevo, Belgrade and Podgorica as well as OPDAT/Mission participation on Hvar in October. Post POC is S/WCI FSN Dubravko Bolsec (385-1-661-2473, bolsecd@state.gov). END COMMENT.

FULL TEXT OF BRIJUNI CONCLUSIONS

¶10. (U) BEGIN TEXT OF CONCLUSIONS:
At the invitation of the Chief State Attorney of the Republic of Croatia, on 11 through 13 July 2007, the State Attorneys' (Prosecutor's) Regional Conference; "Cooperation among State Attorneys' Offices (Prosecutors) in War Crimes Prosecutions - Current and Future Modes of Cooperation" was held in Brijuni, Republic of Croatia.

Together with the State Attorneys (prosecutors) from Bosnia and Herzegovina, Montenegro, Croatia and Serbia, the ICTY Chief Prosecutor and the Head of the OTP Transition Team with their staffs also participated in the conference.

After reviewing the current cooperation and the proposals for

future cooperation, both among the State Attorneys of the countries of the region as well as with the ICTY Office of the Prosecutor concerning the war crimes prosecutions and the matters of mutual support and technical assistance, participants in the conference agreed on the following;

CONCLUSIONS

¶A. The participants agreed that the cooperation between the State Attorneys Offices (prosecution) engaged in the investigations and prosecution of war crimes was progressing well. This cooperation was supported to a significant degree by the Agreements (Memoranda) on Cooperation that had been signed between the participants that made possible the efficient and timely exchange of information and other forms of assistance. It was noted that additional forms of cooperation and assistance that would be needed in the future would be the access to documentation and information from the other national bodies, including archives, and that the modalities of this information examination and exchange would be agreed upon at one of the future conferences.

¶B. Each national prosecution service needs to enhance its teams (staff) working on the investigation and war crimes prosecutions. It is of special importance for each State Attorney's Office (prosecution) to train part of its staff in skills needed for electronic database research and other information retrieval skills.

¶C. Particularly noted at the conference was the need to avoid the duplication of investigations and proceedings through the compilation of a so called "inventory" of cases and the exchange of information with other prosecutions so as to determine who would best positioned to process a particular case. To this end, it is necessary that each State Attorney's Office (prosecution) compile the so called "inventory" of war crimes cases according to a mutually agreed criteria that would be developed in conjunction with the OTP's Transition Team.

¶D. The participants agreed that the "Inventory" based on the mutually agreed criteria and their exchange would improve the

cooperation and assistance in decision making as to who would process the proceedings in order to avoid duplication of investigations and cases. This "inventory" would also assist the ICTY, and in particular the Office of the Prosecutor, in determining the number and complexity of the cases requiring the immediate assistance of the Transition Team in gathering and providing new evidence and documentation in support of national prosecutions.

¶E. It is necessary, as part of the ICTY's Completion Strategy, to provide the assistance of experts in Transition Teams. The experts would assist State Attorneys (prosecutors) in national teams and train them in researching the ICTY databases that would enable the Prosecutions to optimally use the information both in investigations and proceedings transferred to them and in the proceedings initiated by them.

¶F. The participants welcomed the offer by the ICTY Chief Prosecutor to enhance the OTP's support to the region, via its Transition Team that would provide improved cooperation, as well as expertise to respond to the specific needs of the States Attorneys (prosecutors) engaged in specific cases. Aware of the ICTY's Completion Strategy, the national prosecutors urged the ICTY Chief Prosecutor to ensure that the OTP not only retained, but enhanced its capacity to respond in a timely manner to their requests for assistance.

¶G. The State Attorneys (prosecutors) also welcomed the ICTY Chief Prosecutor's offer to provide training to their staffs on the use of the ICTY databases for their needs, underscoring the necessity of immediate and continuing access to and use of the ICTY materials.

¶H. The participants agree that it would be productive to meet, in this format, and the next conference to agree on the mutual criteria to create lists of war crimes cases will be set for autumn 2007. END TEXT OF CONCLUSIONS.

BRADTKE